IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO. 121 OF 2006
IN
SUIT NO. 2745 OF 2005

Jashbhai Somabhai Patel ...Plaintiff
V/s.
Ashapura Developers ...Defendants
And
Ketan Himatlal Parekh & Ors. ...Respondents

Mr.Rakesh Pandey i/b. Mr.M.U. Pandey for the Plaintiff.
Mr.Sanjeev Singh for the Defendants.
Mr.Dhnanjay Singh for Respondent Nos.1 to 3, 5 to 10.

CORAM : SMT.R.S. DALVI, J.

DATED : JANAURY 18, 2007

P.C. :-

1. The plaintiff seeks to join respondent nos.1 to 10 as defendants in this suit. The plaintiff and the defendants entered into the agreement dated 14th July, 2000, Exhibit-A to the plaint. Under that agreement, the plaintiff as the owner was entitled to 3700 sq.ft. built up area in the buildings to be constructed by the defendants. The parties specifically agreed that built up area would be carpet area plus 25% thereof.

2. The plaintiff has admittedly been given the

built up area of 1262 sq.ft. in building no.A constructed by the defendants. The plaintiff has been given three flats being Flat Nos.501, 502 and 503 in building B. The total carpet area of these flats is shown in the Certificate of the Architect, Exhibit-F to the plaint itself is 1440.98 sq.ft. The built up area as per the specific contract between the parties requiring 25% area to be added would make an area of 1900.98 area as built up area under the said three flats.

3. Therefore, the plaintiff has been given 1262 plus 1900 = 3162 sq.ft of built up area. The plaintiff is, therefore, required to be given an additional 618 sq.ft. of built up area. A flat of the same size of the above flats in building B would therefore suffice since other parties are put in possession of the other flats. The defendants have agreed to give the plaintiff vacant possession of flat No.701 which is of total carpet area of 494.18 sq.ft. Adding 25% more to that carpet area as per the specific agreement between the parties that flat would be of 617 sq.ft. built up area.

The difference between the area given to the plaintiff under the agreement Exhibit-A to the plaint is 618 sq.ft. Giving vacant possession of flat no.701 would therefore be complete compliance of agreement between the parties.

4. Mr.Pandey on behalf of the plaintiff contended that the carpet area would exclude the entire balcony area and therefore, total carpet area shown in the Architect's certificate, Exhibit-F to the plaint is not correct. The built up area of 1262 sq.ft. in building-A has been arrived at also by considering the balcony in the flats provided to the plaintiff. Mr.Pandey himself states that flat provided to the plaintiff in building-A is 1000 sq.ft. As per the agreement between the parties, the addition of 25% of the area would make the built up area of 1250 sq.ft. Considering the balcony area, the plaintiff has accepted that 1262 sq.ft. of built up area given to him. Consequently, the computation of the total carpet area in column "C" of Architect Certificate, Exhibit-F to the plaint is correct and as per that calculation, an

additional 1900 sq.ft. is given to the plaintiff.

5. For the grant of the equitable relief, it has to be seen whether as per the agreement between the parties, the plaintiff has been actually given vacant possession of about the same area agreed upon by and between the parties. Since the defendants have conceded to give flat no.701, there is complete compliance of the agreement between the parties.

6. The plaintiff’s son has not agreed to accept the offer of the defendant by taking vacant possession of flat No.701 to end the dispute between the parties. Consequently, the Chamber Summons to bring the purchasers of the flats on record of the suit as proper parties must be granted. The Chamber Summons is made absolute in terms of prayer clause (a). The defendants shall not deal with, dispose of or create any third party rights in one of the flats constructed by the defendants being flat no.701-B pending the suit. Any other undertakings given by the defendants pending the Chamber Summons are vacated.

7. Amendment to be carried out in two weeks in the plaint as well as copy of the plaint served upon the defendants' Advocate. Plaintiff to serve the amended copy of the plaint upon the respondents Advocate. Respondents' Advocate waives service of the writ of summons.

(Smt.R.S. Dalvi, J.)